

9 detectably switch from a first orientation to a second orientation upon contacting
10 said analyte with said recognition moiety; and
11 detecting said second orientation of said at least a portion of said plurality of mesogens,
12 whereby said analyte is detected.

1 **Claim 202.** (Withdrawn) A method for detecting an analyte, comprising:
2 interacting said analyte and a mesogenic layer, wherein said interacting causes at least a
3 portion of a plurality of mesogens to detectably switch from a first orientation to a
4 second orientation; and
5 detecting said second orientation of said at least a portion of said plurality of mesogens,
6 whereby said analyte is detected.

REMARKS/ARGUMENTS

I. Status of the Claims

Claims 129-202 are pending. Claims 129-143, 146, 147 and 155-202 are withdrawn.
Claims 144, 145 and 148-154 are currently presented. No new claims have been added.

III. Responses to the Objections/Rejections

Oath/Declaration

The Examiner states that the Substitute Declaration is defective for lack of signatures of Justin Skaife and Timothy Dubrovsky. Applicant hereby submits a Substitute Declaration with Justin J. Skaife's signature.

After diligent effort, the signature for Timothy F. Dubrovsky cannot be obtained. In such cases, 37 CFR 1.47(a) states that the oath/declaration must be accompanied by: (a) a petition including proof of the pertinent facts; (b) the fee set forth in 37 CFR 1.17(g); and (c) the last known address of the non-signing inventor (included in the petition under (a)). Parts (a)-(c) accompany this response.

Applicants believe that the oath/declaration is now in the proper form according to 37 CFR 1.47(a) and therefore respectfully request withdrawal of the objection.

Gupta is unavailable as a reference under 35 USC § 102(a)

Applicants note that a disclosure of Applicants' own work within the year before the application filing date cannot be used against them under 35 USC § 102(a). MPEP 2132.01 (citing *In re Katz*, 687 F.2d 450 (CCPA 1982)). An article cannot be used as a basis for a rejection under 35 USC 102(a) if Applicants submit a declaration establishing that the article is describing Applicants' own work. *Id.*

Gupta was published in *Science* on March 27, 1998, and was authored by Vinay Gupta, Justin Skaife, Timothy Dubrovsky and Nicholas Abbott. Since the earliest priority date of the instant application is June 5, 1998, *Gupta* was published within the year before the application filing date.

Applicants note that *Gupta* was cited by the Examiner as a reference under 35 USC § 102(a) during prosecution of U.S. Patent No. 6,284,197, whose inventors are identical to the Applicants of the instant application. In response, Applicants submitted a *Katz* declaration, in light of which the rejection under § 102(a) was withdrawn. Thus, the previously submitted *Katz* declaration, a copy of which is now enclosed as Exhibit A, is sufficient to establish that the subject matter disclosed in *Gupta* is Applicants' own work. For the same reasons that *Gupta* could not serve as a § 102(a) reference against the '197 Patent, it is not available as a § 102(a) reference against the instant application. Applicants respectfully request withdrawal of the rejection.

Double Patenting

The Examiner has rejected claims 144, 145 and 148-154 on the ground of nonstatutory double patenting over claim 1 of US Patent No. 6,284,197, either alone or in view of Gupta et al., *Science* 279:2077-2080 (1998). Applicants have herewith filed a terminal disclaimer over US Patent No. 6,284,197 enclosed as Exhibit B. Therefore respectfully request withdrawal of the rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-442-1000.

Respectfully submitted,



Todd Esker
Reg. No. 46,690

MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, California 94105
Tel: 415-442-1000
Fax: 415-442-1001